

ESTTA Tracking number: **ESTTA570076**

Filing date: **11/11/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Major League Baseball Players Association
Granted to Date of previous extension	11/10/2013
Address	12 East 49th Street New York, NY 10017 UNITED STATES

Correspondence information	Heather J. Chase Major League Baseball Players Association 12 East 49th Street New York, NY 10017 UNITED STATES hchase@mlbpa.org Phone:212-584-6516
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**Applicant Information**

Application No	85808129	Publication date	05/14/2013
Opposition Filing Date	11/11/2013	Opposition Period Ends	11/10/2013
Applicant	Simone, Marc 86 Jayson Ave. Great Neck, NY 11021 USX		

**Goods/Services Affected by Opposition**

Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Baseball caps and hats; Beanies; Long-sleeved shirts; Scarves; Shirts; Sports jerseys; T-shirts
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**Grounds for Opposition**

False suggestion of a connection	Trademark Act section 2(a)
Consists of or comprises a name, portrait, or signature of a living individual without written consent, or the name, portrait, or signature of a deceased president without the written consent of the surviving spouse	Trademark Act section 2(c)

**Mark Cited by Opposer as Basis for Opposition**

U.S. Application/Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
Word Mark	The nicknames CANUCKLEBALLER or CANUCKLEBALL, alone and with other terms, including PITCHER
Goods/Services	Apparel, competitions in the field of baseball and other consumer products and services in the field of baseball.

Attachments	CANUCKLEBALL Notice of Opposition.pdf(263027 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/hjc/
Name	Heather J. Chase
Date	11/11/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. : 85/808,129  
For the mark : **CANUCKLEBALL**  
International Class : 25  
Applicant : Marc Simone  
Filed : December 20, 2012  
Published : May 14, 2013

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MAJOR LEAGUE BASEBALL :  
PLAYERS ASSOCIATION :  
 :  
OPPOSER, :  
 :  
v. :  
 :  
MARC SIMONE, :  
 :  
APPLICANT. :  
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OPPOSITION NO. \_\_\_\_\_

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

1. MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION (“Opposer”) is an unincorporated association operating under the laws of the State of New York, with a principal place of business at 12 East 49<sup>th</sup> Street, New York, NY 10017.

2. Upon information and belief, Marc Simone, the applicant for Application Serial No. 85/808,129, is an individual having an address of 86 Jayson Ave., Great Neck, New York 11021 (“Applicant”).

3. Opposer believes that it will be damaged by the registration of Applicant's Application Serial No. 85/808,129 for the mark CANUCKLEBALL as it relates to "baseball caps and hats; beanies; long-sleeved shirts; scarves; shirts; sports jerseys; T-shirts," in Class 25 ("Applicant's Mark," and the goods listed herein, "Applicant's Goods"), and hereby opposes same.

4. Opposer is an association that serves as the union of Major League baseball players in the United States and throughout the world, and represents the interests of all professional baseball players that are members of teams in the American League and the National League. Opposer's principal purpose is to protect the rights of its members.

5. Opposer serves as the group licensing agent on behalf of, and represents certain collective commercial interests of, all active Major League baseball players.

6. Robert Allen "R.A." Dickey ("Dickey"), a Major League baseball player on the Toronto Blue Jays baseball team in the American League, is a member of Opposer. Dickey is a famous and well-known award-winning pitcher. In 2013, Dickey won the Rawlings Gold Glove Award. In 2012, Dickey won the National League Cy Young Award and Players Choice Award for Outstanding NL Pitcher, and was selected to the All-Star Game and named the National League Strikeout Champion and National League Shutouts Champion.

7. Dickey is well known for his "knuckleball" pitch. Dickey was one of only two knuckleball pitchers during the 2011 season. During the 2012 season, and for most or all of the 2013 season, Dickey was the only active Major League player who used the knuckleball as his primary pitch.

8. Dickey played for the New York Mets during the 2010, 2011 and 2012 baseball seasons. On December 16, 2012 the Mets agreed to trade Dickey to the Toronto Blue Jays of the American League, and on December 18, 2012 the trade became official. Dickey played for the Toronto Blue Jays during the 2013 season.

9. Since at least as early as 2012, Dickey, a particular living individual, has been widely and generally known by the nicknames CANUCKLEBALLER or CANUCKLEBALL, alone and with other terms, including PITCHER (collectively, the “Dickey Name”).

10. The Dickey Name is associated with the fame and reputation of Dickey and points uniquely to Dickey as a particular living individual. Accordingly, Dickey has proprietary rights in the Dickey Name.

11. Opposer and Dickey are parties to an agreement through which Opposer has the exclusive right to use, license and sublicense the names, nicknames, likeness, and certain other rights of Dickey in various circumstances, including to commercially market those rights alone or on or in connection with products and services (the “Agreement”). The Dickey Name is subject to the Agreement.

12. On December 20, 2012, Applicant filed Application Serial No. 85/808,129, for the mark CANUCKLEBALL in connection with “Baseball caps and hats; Beanies; Long-sleeved shirts; Scarves; Shirts; Sports jerseys; T-shirts” in Class 25, on an intent-to-use basis pursuant to Section 1(b) of the Trademark Act (the “Application”).

13. Dickey has been referred to by the Dickey Name since prior to the Application filing date.

## COUNT ONE

### **Applicant's Mark Comprises the Name of a Particular Living Individual Without That Individual's Consent**

14. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 13.

15. Applicant's Mark incorporates the Dickey Name, which is a well-known nickname of Dickey, a living individual who is generally and widely known, as he is a famous and high-profile professional ballplayer.

16. Applicant's Mark CANUCKLEBALL identifies and points uniquely to Dickey as a particular living individual, and is associated with his fame and reputation.

17. Dickey, and the names and nicknames of Dickey, are also publicly connected or associated with clothing and the clothing field because his name and nicknames are commonly licensed for use on apparel.

18. Dickey did not provide written consent to the registration of Applicant's Mark, and no such consent is of record.

19. Given the fame and recognition of Dickey, the public would understand and recognize Applicant's Mark in connection with Applicant's Goods as identifying Dickey and reasonably assume there is a connection between Applicant's Mark and Dickey.

20. Applicant's Mark is not registrable pursuant to Section 2(c) of the Trademark Act because it incorporates the name of a living individual without that individual's consent.

21. Opposer will be damaged if Application Serial No. 85/808,129 is granted registration because Applicant will obtain statutory rights in Applicant's Mark without Dickey's

consent to use his nickname, Dickey's identity and nicknames will be weakened as a result, and the rights of Opposer and Dickey to exploit Dickey's nicknames will be damaged.

## COUNT TWO

### False Suggestion of a Connection

22. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 21.

23. Applicant's Mark is likely to be confused with the Dickey Name.

24. Applicant's Mark is a close approximation of the Dickey Name, which is associated with his identity, and Applicant's Mark would be recognized as such, in that it points uniquely and unmistakably to Dickey.

25. Dickey is not connected with the goods of or activities performed by Applicant in connection with Applicant's Mark.

26. The fame and reputation of Dickey is such that, if Applicant's Mark is used in connection with Applicant's Goods, a connection with Dickey would be presumed.

27. Upon information and belief, the Applicant applied to register Applicant's Mark in order to trade on the goodwill associated with Dickey and his nicknames.

28. Applicant's Mark is not registrable pursuant to Section 2(a) of the Trademark Act because it falsely suggests a connection with Dickey.

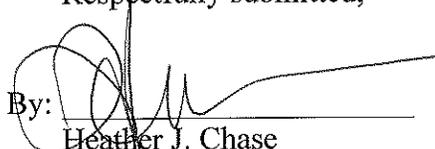
29. Opposer will be damaged if Application Serial No. 85/808,129 is granted registration because Applicant will obtain statutory rights in Applicant's Mark without Dickey's consent to use his nickname, Dickey's identity and nicknames will be weakened as a result, and the rights of Opposer and Dickey to exploit Dickey's names and nicknames will be damaged.

WHEREFORE, Opposer prays that said Application Serial No. 85/808,129 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

This Notice of Opposition is being filed electronically with the TTAB, and is being served on Applicant, through his attorney of record, at the correspondence address of record with the United States Patent and Trademark Office. Proof of Service is attached hereto.

Respectfully submitted,

Dated: November 11, 2013

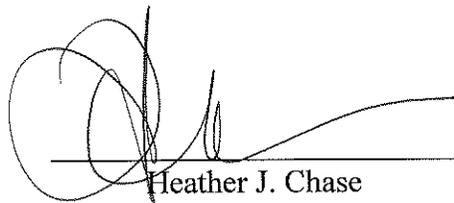
By: 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 11, 2013, I caused a true and complete copy of the foregoing NOTICE OF OPPOSITION to be served by first class mail on the applicant Marc Simone by causing said copy to be deposited in the United States mail, postage prepaid, addressed to the applicant's attorney of record, at the correspondence address of record at the PTO as follows:

Liel Hollander  
Hollander Law, P.C.  
10 Bond Street  
Suite 420  
Great Neck, New York 11021



Heather J. Chase